

## CAN THE LAW HELP PROTECT ME FROM DOMESTIC VIOLENCE?

1. What is domestic violence?
2. How can the law help me if I'm battered?
3. Can a restraining order protect my children?
4. Can the order require the restrained person to pay child support?
5. Will a restraining order keep me safe?
6. Can I get help filling out court papers?
7. Do I have to put my address on court papers?
8. Do I have to go to court to keep a TRO in effect?
9. What does it cost to get a restraining order?
10. If I seek a TRO, will the abuser go to jail?
11. Will I be reported to the INS if I seek a restraining order?
12. What should I do if the abuser violates the restraining order?
13. Should I tell my boss about the order?
14. Is there only one type of restraining order?
15. Can anyone obtain a domestic violence TRO?
16. What will happen if my spouse or partner is arrested for hurting me?
17. What if I decide to drop the charges?
18. Whom else can I call for help and support?
19. Do I need a lawyer? How do I find one?

## Introduction

Violence happens between intimate partners and in families. It can start with shouting and cursing (verbal abuse) and can escalate to pushing, hitting and even death. Often the abuser will say he or she is sorry, and you want to believe that the abuse won't happen again. But then, it does happen again, and sometimes it is worse. The abuser tells you that no one will believe you. The abuser says it is your fault. But no matter what you do or don't do, the abuse continues. And you are afraid.

You are afraid of your spouse, your boyfriend or girlfriend, your adult son or daughter. You want to leave, but you are afraid of what your abuser will do; there have been threats, even threats of bodily harm or death. You may have children whose safety is at risk.

You have reason to be afraid. But the situation is not going to get better. Violence escalates unless steps are taken to change things. Any children of the relationship could also be wounded emotionally by seeing violence between their parents or other family members.

You do not have to face the problem alone. Help is available—whether or not you decide to leave. People will believe you. National and local domestic violence hotlines can refer you to shelters, counseling, legal assistance and support in your area. And while the law cannot protect you absolutely from domestic violence, it can help you protect yourself. You can file for a restraining order against your abuser free of charge. And if you do move out, you can keep your new address confidential on official documents, such as court papers and your driver's license. No intimate partner or family member has the right to abuse you verbally or physically.

### 1. What is domestic violence?

The law defines domestic violence as certain kinds of abuse directed toward a spouse or former spouse, cohabitant or former cohabitant, or a person with whom the abuser has had a "dating or engagement relationship" or with whom the abuser has had a child, or a person related to the abuser by blood or marriage. It is a type of violence that cuts across all cultures, ethnic backgrounds, education levels, and income brackets. It impacts homosexuals as often as heterosexuals. It occurs among teenagers as well as senior citizens, and men as well as women.

Domestic violence is behavior driven by a need to control. It can range from threats, annoying telephone calls and stalking (such as following the victim to and from work, and threatening the victim), to unwanted sexual touching and hitting. It also can be defined as one spouse destroying the other's personal property.

### 2. How can the law help me if I'm battered?

If you are in immediate danger, call 911. If you have children, they, too, could be at risk. When the police arrive, explain what happened. The officers can contact an on-call judicial officer and issue you an *Emergency Protective Order* (also called an EPO) on the spot. This legally prohibits the batterer from coming within a certain distance of you. It also may grant you temporary custody of your children. To obtain an EPO, there must be an "immediate and present" danger that you and/or your child will suffer domestic violence, or that your child will be abducted by a relative. The EPO will remain in effect for five court days or seven calendar days.

To obtain a longer-term restraining order, you must file for a *Temporary Restraining Order* (also called a TRO). Go to your local family law or superior court and request an application for a TRO. (See #6.) You also can request that a local law enforcement agency officially notify—"serve" the order on—the batterer free of charge. The TRO will go into effect as soon as it has been signed by the judge and personally delivered to the batterer. You, however, cannot be the one who officially serves the order; a law enforcement officer or other adult (not named in the order) must serve it.

After filing for the TRO, you must return to court on the date shown on the court papers for a hearing. At that hearing, you may request that the TRO be made "permanent," which means that it will be good for up to three years and can be renewed. Such restraining orders usually require the batterer to stay at least 100 yards—the length of a football field—away from you and have no contact with you.

### 3. Can a restraining order protect my children?

Yes. You can request that the stay-away order also apply to your children. The judge can order the restrained person or batterer to stay away from the children's school as well as the family home and any other location where you might be placed in danger. In addition, the judge may give you temporary custody of the children and set rules regarding visitation. If, however, you are seeking custody, you will have to attend court-ordered mediation after applying for the TRO. As a victim of domestic violence, you can attend mediation sessions apart from the restrained person. A support person can accompany you to such sessions, though she or he cannot participate.

### 4. Can the order require the restrained person to pay child support?

Yes, but only if the child is a product of your marriage to the batterer or if the restrained person has been legally established as the child's father (through, for example, a paternity court action). You then can request that child support be included in the restraining order. Fill out an Income and Expense Declaration and attach it to the TRO application if you want the judge to consider your circumstances in making such a decision.

The judge also can assign you sole temporary possession of the family home—regardless of who owns it or whose name is on the lease. And the order can grant you exclusive use of other property, such as a car. The law even allows the judge to require that certain debts be paid while the order is in effect, that property not be transferred or sold, and that the restrained person reimburse you for losses caused by his or her abuse.

What if you already have a divorce action pending against your abuser? You can still seek a separate restraining order and include any of the specific requests listed above. However, the court will probably merge the two cases into one eventually.

### 5. Will a restraining order keep me safe?

Not necessarily. Studies suggest that restraining orders lower, but do not eliminate, the risk of ongoing violence. Some batterers respect such orders; some do not. In some instances, seeking a restraining order may put you in greater danger of significant bodily injury or death. The data suggests that most serious injuries and fatalities occur after the victim leaves his or her abuser. You may want to consider moving to a domestic violence shelter or the far-off home of a friend unknown to the batterer.

Not leaving an abusive partner, however, could be extremely dangerous in the long run. Domestic abuse often escalates. In a 1997 study, 88 percent of the victims in domestic violence fatalities had a documented history of physical abuse (The Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project).

Trust your instincts and do everything you can to keep yourself out of harm's way. A restraining order can help protect you, but it is still just a piece of paper. Don't harbor a false sense of security.

### 6. Can I get help filling out court papers?

Yes. Most civil courts (this includes family court) have domestic violence programs and information on additional local resources. Each court has family law facilitators who can assist you in completing your application before you file it. Other programs help you fill out forms and prepare for court, and then provide a "support person" who can accompany you to hearings. Most of these programs offer such services free of charge.

7. Do I have to put my address on court papers?

No. You may write “address confidential due to domestic violence” on your forms. Additionally, recent legislation allows survivors of domestic violence to keep their home addresses confidential through the Safe At Home program, which is run by the Secretary of State’s office. If you meet certain criteria, the Safe At Home program will give you a substitute mailing address to use on official documents, including court papers and your driver’s license. In addition, your voter’s registration records will be kept confidential; as a registered voter in the Safe At Home program, you automatically receive absent voter status. Also, if you decide to get married while in the program, your address will remain confidential on those documents as well.

Here’s how the Safe At Home program works: You apply through one of the many designated local domestic violence services programs. To qualify, you must meet criteria establishing you as a victim-survivor of domestic violence. Then you will be issued a Safe At Home identification card with the substitute address. Any first-class or government mail sent to you at that address will be forwarded within 48 hours. Any service of process delivered to the address also will be passed on to you. If you follow the rules, you can use the address for up to four years. For more information, call the program toll-free at 1-877-322-5227. Or, visit the program’s Web site at [www.ss.ca.gov/safeathome](http://www.ss.ca.gov/safeathome).

Keep in mind, however, that the Safe At Home program is simply one more protective measure. It is not a guarantee of safety. While it may provide vital assistance, no such program is fail-safe. Use all measures possible to keep yourself and your children safe.

8. Do I have to go to court to keep a TRO in effect?

Yes. If you don’t show up for the court hearing scheduled within three weeks of filing, your TRO will simply expire. On the notice delivered to the restrained person, it also warns that if he or she fails to show up for court, the judge may grant the requested order for up to three years without further notice. The “permanent” restraining order must be served on the abuser by an adult other than you to go into effect.

9. What does it cost to get a restraining order?

Nothing. Unlike other court applications, there is no filing fee for domestic violence restraining orders. In addition, you can request that local police deliver the order free of charge to the abuser. You may be required to file a declaration showing financial need to have the order served for free.

10. If I seek a TRO, will the abuser go to jail?

No. A restraining order is a civil—not criminal—action. It legally bars the abuser from coming near you. Its aim is to help prevent future domestic violence, to help keep you and your children from getting hurt. As long as your abuser does not violate the order or face any criminal charges, he or she will not be arrested.

However, the judge may order the abuser to attend counseling sessions or anger management classes. In granting the restraining order, the judge also could - if he or she feels it would help the situation—require you to get counseling as well. For example, the judge may decide that “empowerment” classes, such as those offered in Orange County, may help boost your self-esteem.

11. Will I be reported to the INS if I seek a restraining order?

Anyone, including an angry spouse, could report you to the Immigration and Naturalization Service (INS) at any time. It is not, however, an automatic step in the court process to make such a report. This does not mean, of course, that it could never happen. But you need not be afraid that the INS will be notified automatically if you file for a restraining order.

You also should be aware of a special provision in the laws governing immigration and naturalization that may apply to you. If your immigration status is dependent on your spouse and you are a victim of domestic violence, you may be able to “self-petition” for legal status under the federal Violence Against Women Act.

12. What should I do if the abuser violates the restraining order?

Call 911 immediately if you believe that you might be in danger. At the very minimum, you should notify the police. Remember to carry a copy of your EPO, TRO or permanent restraining order with you at all times. Show it to the police when reporting the violation. Restraining orders are valid nationwide. In California, they are input into California’s Law Enforcement Telecommunications System (CLETS); this means that a record of the order should be retrievable by every law enforcement agency in the state. But keep a copy of the order with you as an added precaution—even in California. The law states that the court must provide you with five stamped, certified, endorsed copies at no charge.

What happens to the abuser will depend on the specific situation. He or she could be arrested and, if found in contempt (a misdemeanor) for violating the court order to stay away from you, could be jailed for up to a year and/or fined \$1,000. Or, he or she might even face a felony charge. If the abuser takes or conceals a child in violation of the order or physically injures you, he or she could be charged with a felony, which is punishable by a state prison sentence and/or a fine.

Don’t be caught off-guard. Establish a safety plan that includes teaching your children what to do if the batterer shows up. Alert your children’s daycare provider or school officials, and give them a copy of the restraining order. Make sure that your home is as secure as possible. Consider installing an alarm system. Most importantly, refrain from contact with the batterer. Let your telephone answer machine pick up calls before you do. Confide in a trusted neighbor, and ask him or her to call police if the abuser comes near your home.

13. Should I tell my boss about the order?

Only you can assess your particular situation. But there are compelling reasons for alerting your employer. For example, an unknowing co-worker could give the batterer your personal information, which you don’t want him to know. Or, a co-worker could wind up caught in the middle of a violent scene in or near your workplace.

Perhaps you are worried that you will lose your job if you reveal your circumstances. Employers, however, cannot fire or demote you simply because you are a survivor of domestic violence. Recent state legislation prohibits such discrimination. And if your supervisors are aware of the potential danger, they will be better equipped to help protect you and your co-workers. For example, they, too, could seek a restraining order if the situation warrants it. And company security could be warned to be on the lookout for your abuser—and to alert you and your supervisors if he approaches the building.

14. Is there only one type of restraining order?

No. A domestic violence restraining order—instituted by the Domestic Violence Protection Act—applies only to certain kinds of relationships. Its specific purpose is to prevent the recurrence of domestic violence and to separate those involved so that they can “seek a resolution of the causes of the violence.”

In contrast, a civil harassment restraining order, for example, usually applies to a variety of irritating, non-life-threatening kinds of harassment (such as a neighbor’s dog that barks all night).

Both types of restraining orders prohibit contact. A domestic violence restraining order, however, also prohibits the restrained person from possessing or buying a firearm—or even trying to acquire one. By law, anyone violating this restriction is subject to a \$1,000 fine and imprisonment. Such a violation is a separate federal crime as well.

#### 15. Can anyone obtain a domestic violence TRO?

Even if your problem involves domestic violence, you must meet certain criteria to qualify for this type of restraining order yourself. You must have dated, been engaged to, lived with or been married to the abusive person. You also would qualify if the two of you have a child together or if you are otherwise related by blood or marriage.

What if, however, your daughter's boyfriend will not stop calling you in search of your daughter? Perhaps he is even leaving threatening messages on your answer machine. In this case, your daughter may be able to seek a domestic violence restraining order, depending on the circumstances. But you, as the mother, would need to seek a civil harassment restraining order to legally bar your daughter's boyfriend from contacting you.

#### 16. What will happen if my spouse or partner is arrested for hurting me?

What happens next will depend on the circumstances that led to the arrest. How seriously were you injured? Was anyone else hurt? Did he or she threaten you or anyone else? Has he or she ever been arrested for anything like this before? Depending on the case, your abuser could be placed on probation and referred to a "batterer's" program, or spend time in custody.

A police investigator will probably contact you after the arrest. If not, you may want to call the police and request a follow-up interview. Some law enforcement agencies have special domestic violence response units. However, you should be aware that the handling of domestic violence cases differs from county to county.

It is not uncommon for batterers to be put on probation for three years and ordered to undergo one year of domestic violence counseling in an approved program. Judges presiding over such cases also frequently impose a criminal "stay-away order," which is similar to a TRO. You can also request such an order of the court. The criminal stay-away order usually will remain in effect throughout the batterer's probation.

For assistance with your case, you could call California's Victims of Crime Program at 1-800-777-9229 to find the nearest Victim/Witness Assistance Center. A Victim/Witness Assistance advocate may be able to provide you with some guidance. In some counties, advocates can help you locate the investigator or prosecutor handling your partner's case, advise you of what to expect, and even escort you to court. They also should be able to tell you whether your county has a victim-witness notification system that will contact you when your partner is released from jail. (To receive notification, you must register with the system.)

#### 17. What if I decide to drop the charges?

That decision is not yours to make. Your forgiveness does not excuse your partner from the consequences of committing a crime. As the victim, your opinion and perspective are important. But an act of domestic violence is, by law, a crime against the state—not just a crime against you. If criminal charges are filed, it is up to the judge and, in some cases, a jury to decide whether there is enough evidence for a conviction.

#### 18. Whom else can I call for help and support?

Call the National Domestic Violence Hotline at 1-800-799-SAFE (1-800-799-7233 or, for TTY, 1-800-787-3224). Whoever answers the phone can help you deal with your situation, and can refer you to shelters, counseling, and other assistance available in your area.

You are not alone. There are more than 4 million victims of domestic violence each year. One intimate partner in three will experience at least one physical assault during his or her lifetime. In addition, there are growing numbers of elderly parents who are verbally or physically abused by their adult children. It is not your fault. Help is available.

In California alone, there are dozens of local assistance programs. You may be able to get free counseling for your children as well as yourself. You may even be able to recoup wages lost while recovering from injuries incurred by a spouse or partner. California's Crime Victim Compensation Program—administered by the State Board of Control's Victims of Crime Program—provides such financial help to crime victims who meet certain criteria. Other losses that may be reimbursed by the program include the cost of medical and dental work, mental health counseling, financial support, a funeral and burial, and job retraining. Call the Victims Resource Center toll-free at 1-800-VICTIMS (842-8467) or the Victims of Crime Program at 1-800-777-9229 for more information.

#### 19. Do I need a lawyer? How do I find one?

Whether or not you need a lawyer depends on your specific situation. For example, do you plan to file for divorce? Are you facing a custody dispute? Are you afraid that your children could be in danger if awarded to your spouse? What kinds of assets are at stake?

Property settlements and custody arrangements can be complicated. The ongoing threat of domestic violence only further complicates the situation. A lawyer can tell you how the court may divide your property and help you put your settlement agreement into writing. A lawyer could also help you understand your legal rights regarding your children, and present your best case for their custody and support.

You can probably find sufficient assistance, at little or no cost, to file for a TRO without hiring a lawyer. But domestic violence cases often involve a variety of issues, including spousal support and the division of property, in which a lawyer's assistance could have crucial impact on the outcome. Only you know the extent of your situation.

If you decide that you need a lawyer and you don't know one, ask a friend, co-worker, employer or business associate to recommend one. Or, you could call a State Bar-certified lawyer referral service in your area. To locate one, look in the Yellow Pages of your telephone directory under "Attorney Referral Service" or call your local bar association. For an online list of certified referral services, visit the State Bar's Web site at [www.calbar.ca.gov](http://www.calbar.ca.gov).

State Bar-certified lawyer referral services, which must meet minimum standards established by the California Supreme Court, can assist you in finding the right lawyer for your particular problem. Most of these services offer half-hour consultations for a modest fee.

Attorneys who are members of certified lawyer referral services must carry insurance, agree to fee arbitration for fee disputes, meet certain standards of experience and be State Bar members in good standing.

Lawyer referral service fees do vary. Don't forget to ask whether there is a fee for the referral or initial consultation. And if you decide to hire a lawyer, make sure you understand what you will be paying for, how much it will cost and when you will be expected to pay your bill. You may want to talk to several attorneys before you hire one.

Lawyers who handle custody and divorce cases are called family law attorneys. Some are "certified specialists" in family law. This means that they have met standards for certification set by the State Bar of California. However, not all lawyers who have experience and expertise in family law have sought certification.

What if you do not have enough money to pay for legal advice? You may belong to a legal insurance plan that covers these kinds of services. Or, if you have very little income, you may qualify for free or low-cost legal help. Check the white pages of your telephone directory for a legal services program in your area. (California's new statewide legal services Web site—[www.LawHelpCalifornia.org](http://www.LawHelpCalifornia.org)—can help you locate a local program and provide you with additional resources as well.) Or ask a State Bar-certified lawyer referral service if it offers free legal advice for individuals with a low income or can refer you to a no-cost legal services organization.

For more information, see the State Bar pamphlet *How Can I Find and Hire the Right Lawyer?* To find out how to obtain a free copy of this pamphlet and other State Bar consumer education pamphlets, call 415-538-2280 or send an e-mail to [pamphlets@calbar.ca.gov](mailto:pamphlets@calbar.ca.gov). Or visit the State Bar's Web site—[www.calbar.ca.gov](http://www.calbar.ca.gov)—where you'll find the consumer education pamphlets, as well as information on ordering them. The pamphlets also can be ordered in bulk.

The purpose of this pamphlet is to provide general information on the law, which is subject to change. If you have a specific legal problem, you may want to consult a lawyer.

The State Bar of California  
Office of Media & Information Services  
180 Howard Street  
San Francisco, CA 94105-1639  
415-538-2000  
415-538-2280 (for pamphlets)  
pamphlets@calbar.ca.gov  
[www.calbar.ca.gov](http://www.calbar.ca.gov)

© 2000, 2003 The State Bar of California. No part of this work may be reproduced, stored in a retrieval system, or transmitted in any medium, without prior written permission.

The Domestic Violence Committee of the Family Law Section of the State Bar of California played a key role in developing, editing and revising this pamphlet.